

DUANE MORRIS LLP
Fran M. Jacobs (FJ-0892)
Javier Chavez (JC-5539)
1540 Broadway
New York, NY 10036-4086
(212) 692-1060
Attorneys for Plaintiff

08 CV 7538



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORNELL & COMPANY, INC.

Plaintiff,

-against-

OWEN STEEL COMPANY, INC.

Defendant.

Civil Action No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Cornell & Company, Inc. ("Cornell"), by its attorneys, Duane Morris LLP, as its Complaint against the Defendant, Owen Steel Company, Inc. ("Owen"), alleges as follows:

THE PARTIES

1. Cornell is a New Jersey corporation with its principal place of business located at 224 Cornell Lane, Westville, NJ 08093.
2. Owen is a Delaware corporation with its principal place of business located at 727 Mauney Drive, Columbia, SC 29201.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this dispute under 28 U.S.C. § 1332(a). The amount in controversy exceeds the sum of \$75,000, exclusive of interest and cost, and the matter is between citizens of different states.

4. Venue is appropriate in this Judicial District pursuant to 28 U.S.C. §§ 1391(a) and 1391(c) because, among other reasons, Owen regularly conduct business within the State of New York, including within this Judicial District, and because a substantial portion of the events and/or omissions giving rise to the claims at issue herein occurred within this Judicial District. In addition, Part 11 of the parties' agreement provides that disputes shall be brought where work thereunder is performed, which is this Judicial District.

BACKGROUND

5. On November 19, 2004, Owen entered into a contract with One Bryant Park LLC to supply and erect the structural steel for One Bryant Park project located in New York, New York (the "Project").

6. On December 14, 2004, Cornell entered into a subcontract with the Owen to perform certain structural steel erection work in connection with the Project (the "Subcontract").

7. Cornell performed all work under the Subcontract in a good and workmanlike manner.

8. Owen failed to pay Cornell all amounts due and owing under the Subcontract.

9. On several occasions throughout the course of the Project, Owen delayed and/or suspended Cornell's work, causing Cornell to incur extra costs of in excess of \$3 million, for which Owen is liable to reimburse Cornell under the Subcontract.

10. Cornell also performed extra work for Owen at Owen's direction and authority, which is valued at in excess of \$1.5 million.

11. Owen is also wrongfully withholding retainage from Cornell in the amount of \$700,960.00.

12. Cornell is further entitled to recover the balance due under the Subcontract of \$84,492.00.

13. On several occasions, Cornell demanded payment from Owen under the Subcontract for labor and materials, including, but not limited to, additional labor and materials caused by extra work and extended Project completion. Owen has failed to make payment to Cornell.

14. Owen is therefore liable to Cornell for in excess of \$5.3 million for work relating to the Project.

CLAIM FOR RELIEF
(Breach Of Contract)

15. Cornell repeats and incorporates each and every allegation contained in the preceding paragraphs as if set forth at length herein.

16. Cornell has fully performed all of its obligations under the Subcontract and has satisfied all obligations under the Subcontract to bring this claim.

17. Owen breached the Subcontract through its actions and inactions, as well as Owen's failure to make payment to Cornell for all moneys due for furnishing labor and materials in the prosecution of the work as described above.

18. Cornell has been damaged as a result of the breach of Owen.

19. Under the Subcontract, Cornell is entitled to recover its attorneys' fees and other expenses for litigation.

20. By reason of the foregoing breaches by Owen, Cornell is entitled to recover damages in an amount to be determined at trial, but not less than \$5.3 million.

WHEREFORE, Cornell demands judgment in its favor against Defendants in an amount in excess of \$75,000.00, together with pre-judgment interest thereon, attorneys fees, costs, and such other relief as this Court deems appropriate.

Dated: New York, New York
August 26, 2008

Respectfully submitted,

DUANE MORRIS LLP

By: *Fran M. Jacobs*
Fran M. Jacobs
fmjacobs@duanemorris.com
Javier Chavez
jchavez@duanemorris.com
1540 Broadway
New York, NY 10036-4086
(212) 692-1000
Attorneys for Plaintiff

Of Counsel:

DUANE MORRIS LLP
Joseph A. Battipaglia
Jason M. Muncey
30 South 17th Street
Philadelphia, PA 19103-4196
(215) 979-1186/1109